Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 607.

The State of Missouri, at the Relation of Mildred B. Johnson, Administratrix of the Estate of John T. Barker, Deceased, and Mary G. Jacobs, Executor of the Estate of Floyd E. Jacobs, Deceased; and Mildred B. Johnson, Administratrix of the Estate of John T. Barker, Deceased, and Mary G. Jacobs, Executrix of the Estate of Floyd E. Jacobs, Deceased,
Appellants

vs.

Jack L. Clay (Successor to C. Lawrence Leggett), Superintendent of the Division of Insurance, Department of Business and Administration of the State of Missouri, et al.,
Appellees.

APPEAL FROM THE SUPREME COURT OF MISSOURI.

SEPARATE MOTION TO AFFIRM OR ALTERNATIVE MOTION TO DISMISS OF APPELLEE, JACK L. CLAY (SUCCESSOR TO C. LAWRENCE LEGGETT), SUPERINTENDENT OF THE DIVISION OF INSURANCE, DEPARTMENT OF BUSINESS AND ADMINISTRATION OF THE STATE OF MISSOURI

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Jack L. Clay, successor to C. Lawrence Leggett, Superintendent of the Division of Insurance of the State of

Missouri, one of the appellees in the above-entitled cause, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves the court that the final judgment of the Supreme Court of Missouri be affirmed or, in the alternative, that the appeal herein be dismissed upon the following grounds:

(1) There was not drawn into question the validity of any State statute on the ground of its being repugnant to the Constitution of the United States, so there was no decision in favor of its validity.

(2) No substantial Federal question is involved.

STATEMENT.

This is a direct appeal from the final judgment of the Supreme Court of Missouri in the case of *State ex rel.* v. *Leggett*, 359 S.W.2d 790, which judgment affirmed the action of the Circuit Court of Cole County, Missouri, in dismissing the plaintiffs' petitions in two cases.

The plaintiffs in said cases were attorneys who had been employed in 1930 by the Superintendent of Insurance of Missouri with the consent of the Governor of Missouri to recover certain excess premiums illegally collected by fire and windstorm insurance companies. The contract of employment provided that if the attorneys succeeded in recovering any sums from the insurance companies they should be compensated for their services from the funds so collected.

A large amount of money was collected as a result of the litigation conducted by the attorneys, but the Supreme Court of Missouri ruled that said attorneys could not be paid out of said funds under the law of Missouri and that the portion of their contract of employment so providing

was illegal, *Aetna Ins. Co.* v. *O'Malley*, 343 Mo. 1232, 124 S.W.2d 1164. Thereafter followed a long series of litigation by and on behalf of said attorneys to recover compensation for their services, and a history of said litigation is found in the decision herein sought to be reviewed, *State ex.rel.* v. *Leggett*, 359 S.W.2d 790.

The action in the State courts herein sought to be reviewed was an administrative review proceeding instituted to review the action of the Superintendent of the Division of Insurance of Missouri in denying plaintiffs a hearing on their claims for compensation and in denying their compensation, Sec. 536.150, R.S. Mo. 1959 (Sec. 536.105, V.A.M.S.).

ARGUMENT.

I. This Court Does Not Have Jurisdiction of This Appeal.

The validity of no statute of the State of Missouri was drawn in question by the proceedings in the State courts and hence there was no decision by the highest court of the State of Missouri in favor of the validity of a statute. Nowhere in the petitions filed in the trial court was any attack made on any state statute. In the motion for rehearing filed in the Supreme Court after the judgment herein sought to be reviewed was rendered, no attack was made on the validity of any state statute. Jur. Stat. A27. Consequently the Supreme Court of Missouri did not rule in favor of the validity of any State statute.

II. No Substantial Federal Question Is Involved.

A. Appellants Have Not Been Denied Due Process.

Appellants complain that they have been denied access to the courts or quasi-judicial tribunals in which they

cart assert their rights. Jur. Stat. 23. The proceeding in the State courts here sought to be reviewed was a judicial proceeding which appellants initiated and which was carried to a determination of their rights. The record will show that appellants by their actions in the Circuit Court of Missouri invoked the jurisdiction of that court to review the denial by a state officer of their claims for compensation. Therefore appellant did have and did invoke the right to have the adverse ruling of the state officer reviewed under an appropriate statute, Sec. 536.150, R.S. Mo. 1959 (Sec. 536.105, V.A.M.S., 1949 Statutes). Had the Circuit Court overruled the motion to dismiss the review proceeding it would have given the appellants the right to prove the allegations of their petitions. By sustaining the motions to dismiss the Circuit Court held that even admitting all allegations of their petitions to be true, appellants could not obtain relief. Therefore appellants were in a good condition to have their claims ruled on by the courts as if they had put on their evidence to prove their allegations. In fact, they were in better position because they were not confronted by any adverse evidence.

The Supreme Court of Missouri therefore correctly held that the state officer, this appellee's predecessor, did in fact rule upon the claims of appellants. 359 S.W.2d 790, 800. In effect he found all the facts to be as claimed by them as completely as he could have done after an extended hearing. When the Circuit Court dismissed the appellants' petitions it likewise found all the alleged facts in favor of appellants, but it ruled that nonetheless appellants could not recover. The Supreme Court of Missouri by affirming the Circuit Court decision also found the facts alleged by appellants to be true, but that court likewise ruled that appellants could not obtain relief in said actions.

Appellants therefore availed themselves of an administrative tribunal and of a review of that tribunal's rul-

ings by the courts, and hence there has been no denial of appellants' right to access to the courts or quasi-judicial tribunals.

B. There Has Been No Impairment of Appellants' Contract.

Appellants made an invalid contract so far as their compensation was concerned. *Aetna* v. *O'Malley*, 343 Mo. 1232, 124 S.W.2d 1164. No authority is cited by appellants to support their claim that even though their contract as to compensation was invalid they are entitled to compensation on some theory of *quantum meruit*. Appellants make the assertion that the Supreme Court had in prior decisions held that they were entitled to receive reasonable compensation. Jur. Stat. 29. We are unable to find any such holding in any of the cases cited by appellants.

C. Appellants Have Not Been Denied Equal Protection of the Law.

Appellants contracted with the State through its Governor and Superintendent of Insurance as to how they should be paid. They must rely upon their contracts just the same as anyone else similarly situated would be required to do. They cite no act of the Legislature nor any decision of any court of Missouri which treated others similarly situated any differently. They make a statement that other lawyers were paid from the same funds which the Supreme Court of Missouri said appellants could not be paid from, and that therefore appellants have been discriminated against. Jur. Stat. 31. The Supreme Court of Missouri held that the fees allowed out of the fund in question to other lawyers referred to were illegally allowed. *Jacobs* v. *Leggett*, 295 S.W.2d 825. If the fact that through some administrative error such illegal fees were paid requires payment of illegal fees to appellants, then we have the ridiculous doctrine that if an officer or agency

of a state does or countenances an illegal act, then forever thereafter all other persons can use such illegal act as a basis for an illegal claim on their part. Such is not the law. *Jacobs v. Leggett*, 295 S.W.2d 825; *Barker v. Leggett*, 102 F. Supp. 642, 645 (D.C. Mo.).

CONCLUSION.

Appellant Superintendent of the Division of Insurance of Missouri respectfully submits that the validity of no State statute was ruled upon by the Supreme Court of Missouri and that there was no substantial Federal question in this case, and that therefore his motion to dismiss the appeal should be sustained or in the alternative that the judgment of the Supreme Court should be affirmed.

Respectfully submitted,

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PROOF OF SERVICE.

I, John C. Baumann, Counsel for Jack L. Clay, Superintendent of the Division of Insurance of the State of Missouri, and appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that I served copies of the foregoing on all parties as follows:

1. On the appellants State of Missouri ex rel. Mildred B. Johnson Admx. et al., by depositing two copies in the U. S. Mail, with regular postage prepaid, in an envelope addressed to their attorney of record, Walter A. Raymond, Esq., 915 Grand Avenue, Kansas City, Missouri, on the 18th day of December, 1962.

2. On the appellee Aetna Insurance Company et al., by depositing two copies in the U. S. Mail, with regular postage prepaid, in an envelope addressed to their attorney of record, Honorable James M. Douglas, 705 Olive Street, St. Louis 1, Missouri, on the 18th day of December, 1962.

3. On appellee State Farm Mutual Insurance Company by depositing in the United States Mail, with regular postage prepaid, two copies in an envelope addressed to its attorney of record, Thomas E. Deacy, Sr., Esquire, 2300 Bryant Building, Kansas City 6, Missouri, on the 18th day of December, 1962.

4. On appellee Hardware Mutual Casualty Company by depositing in the United States Mail, with regular postage prepaid, two copies in an envelope addressed to its attorney of record, George A. Spencer, Esquire, 517 Guitar

lding, Columbia, Missouri, on the 18th day of Decem-
. 1962.

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